

Option 2 – Discussion Draft on Amendments Regarding Exempt from Filing Claims

(Water Adjudication Advisory Committee is holding a telephone conference call to discuss draft on August 10, 2012 at 2 PM. 1-877-526-1243 Participant Code 51610471#)

85-2-222. Exemptions. “(1) Claims for existing rights for livestock and individual as opposed to municipal domestic uses based upon instream flow or groundwater sources and claims for rights in the Powder River Basin included in a declaration filed pursuant to the order of the department or a district court issued under Sections 8 and 9 of Chapter 452, Laws of 1973, or under Sections 3 and 4 of Chapter 485, Laws of 1975, are exempt from the filing requirements of 85-2-221(1). Such claims may, however, be voluntarily filed pursuant to 85-2-221(1), or may be determined pursuant to subsection (2) below ~~until~~ (a) **until** issuance of a final decree pursuant to 85-2-234 or (b) **upon** re-opening of a final decree pursuant to 85-2-237, whichever occurs later.

(2) The owner of an existing water right exempt from filing under subsection (1) above may file a petition in the Water Court requesting a determination of the exempt water right provided that the owner of the right publish notice of a motion to amend the temporary preliminary or preliminary decree to include the exempt right determined pursuant to the provisions of 85-2-233(6).

- (a) The costs of the notice must be borne by the petitioner requesting determination of the exempt right. The Water Court may set a reasonable filing fee for such petitions.
- (b) **Exempt water rights filed under this subsection are not accorded prima facie status under 85-2-227.**
- (c) **Any petition filed under this subsection (2) shall include the information identified in 85-2-224(1) and (2) and shall be submitted on a form provided by the department.**
- (d) **Exempt water rights filed under this subsection are subject to examination by the department under 85-2-243 and rules adopted by the Montana supreme court. Issue remarks shall be resolved as provided for under 85-2-233 or 85-2-248.**

(3) Any claims for existing rights that are exempt from filing under subsection (1) and that are not voluntarily filed under 85-2-221(1) or determined as provided for in subsection (2) above are not forfeited but (such uses) ~~are deemed de minimus uses of water. Such de minimus uses of water are not subject to administration under 85-2-406(1).~~

(4) If the water judge finds that the right asserted in a petition under subsection (2) is invalid as asserted or otherwise without merit, the water judge shall award costs and reasonable attorney fees to any party opposing the petition.

85-2-233(6) as follows:

“(6) After the issuance of a temporary preliminary decree or preliminary decree, notice of any motion to amend such decree to include claims exempt from filing under 85-2-222, (or to amend) a statement of claim or a timely filed objection [~~that may adversely affect other water rights~~] must be published once a week for three consecutive weeks in two newspapers of general circulation in the basin for which the particular decree was issued, or where the statement of claim or objection was filed. The notice must specify that any response or objection to the proposed amendment must be filed within 45 days of the date of the last notice. The water judge may order any additional notice of the motion as the water judge considers necessary. The costs of the notice required pursuant to this section must be borne by the moving party.